

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ERIC X. RAMBERT,)	2:14cv1262
)	Electronic Filing
Petitioner,)	
)	Judge Davis Stewart Cercone
v.)	Magistrate Judge Lisa Pupo Lenihan
)	
VINCENT T. MOONEY, THE)	
DISTRICT ATTORNEY OF THE)	
COUNTY OF ALLEGHENY, and)	
THE ATTORNEY GENERAL OF)	
THE STATE OF PENNSYLVANIA,)	
)	
Respondents.)	

MEMORANDUM ORDER

This case was commenced by Petitioner's filing of a Petition for Writ of Habeas Corpus ("Petition") in the Eastern District of Pennsylvania on December 9, 2013. It was transferred to this Court on September 15, 2014, and referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and the Local Rules of Court for Magistrate Judges. Respondents filed a Motion to Dismiss the Petition on November 3, 2014, and, on June 8, 2015, Magistrate Judge Lenihan filed a Report and Recommendation recommending that the Motion be granted and the Petition be dismissed as second or successive. The parties were advised that written objections to the Report and Recommendation were to be filed within 14 days of the date of service. Petitioner submitted written Objections on June 25, 2015, and he filed additional Objections on August 10, 2015.

Petitioner's Objections are without merit. Neither petitioner's degree of dissatisfaction with Attorney Barrett's performance during the PCRA proceedings nor the advancing of "new

evidence" during that collateral review process provides a basis to remove the jurisdiction bar erected by the indisputable fact that the instant petition is a successive petitioner for which leave to proceed has not been obtained from the United States Court of Appeals for the Third Circuit. Similarly, an equitable balancing of the multiple factors articulated in Cox v. Horn, 757 F.3d 113, 115-16 (3d Cir. 2014), fails to provide any basis for circumventing the finality and comity interests erected by 28 U.S.C. § 2254(b). Considerable time elapsed between the issuance of Martinez v. Ryan, 132 S. Ct. 1309 (2012) and the filing of petitioner's current submission. Bald and conclusory assertions of ineffective assistance hardly provide a strong showing prejudicial ineffectiveness. Petitioner's underlying conviction and collateral review proceedings ended long ago. Petitioner likewise has had prior opportunities to raise his new claim of ineffective assistance and his failure to do so prior to the instant submission is not a matter that weighs in favor of the extraordinary relief he seeks. Compare Joseph v. Beard, 2015 WL 1443970 (E.D. Pa. March 27, 2015). Thus, none of the factors identified in Cox weigh in favor of relief under Rule 60(b).

In short, petitioner's objections do not undermine the Magistrate Judge's Report and Recommendation, which correctly analyzes the issue and makes a sound recommendation. Accordingly, after *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation, and Objections thereto, the following order is entered:

AND NOW, this 18th day of August, 2015,

IT IS HEREBY ORDERED that Respondents' Motion to Dismiss (ECF No. 13) is **GRANTED**.

IT IS FURTHER ORDERED that Petitioner's Motion for Relief of Judgment (ECF No. 23) is **DENIED**.

IT IS FURTHER ORDERED that the Petition for Writ of Habeas Corpus (ECF No. 1) is **DISMISSED** as a second or successive petition.

IT IS FURTHER ORDERED that a Certificate of Appealability is **DENIED**.

IT IS FURTHER ORDERED that Magistrate Judge Lenihan's Report and Recommendation (ECF No. 24) as augmented above is **ADOPTED** as the Opinion of the Court.

IT IS FURTHER ORDERED that the Clerk of Court mark this case **CLOSED**.

AND IT IS FURTHER ORDERED that, pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, if any party wishes to appeal from this Order then a notice of appeal, as provided in Fed. R. App. P. 3, must be filed with the Clerk of Court, United States District Court, at 700 Grant Street, Room 3110, Pittsburgh, PA 15219, within thirty (30) days.

s/David Stewart Cercone

David Stewart Cercone
United States District Judge

cc: Eric X. Rambert
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(Via First Class Mail)

Ronald W. Wabby, Jr., Esquire
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